

**IN THE
SUPREME COURT
OF THE UNITED STATES**

October Term, 1991

RAYMOND MIRELES,

Petitioner

v.

HOWARD WACO,

Respondent.

**BRIEF AMICUS CURIAE
OF
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR
THE COUNTY OF LOS ANGELES
IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

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INTEREST OF AMICUS CURIAE

The Superior Court of the State of California for the County of Los Angeles is a political subdivision of the State of California within the meaning of Supreme Court Rule 37.5.¹ Accordingly, written consent from the parties for the filing of this brief is not required.

The Superior Court of the County of Los Angeles is the largest superior court in the State of California,² and constitutes one of the largest court systems in the nation. It is currently authorized to have 238 judges.

¹ The judicial power of the State of California is vested in its "Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts." California Constitution, Article VI, §1.

² In each county within the State of California there is one superior court, with one or more judges. California Constitution, Article VI, §4. The State of California has 58 counties.

California Government Code §69586.

The Superior Court is a court of general jurisdiction.

The Superior Court and its judges support the granting of the Petition for Writ of Certiorari in this case which is in conflict with the common law principle of absolute judicial immunity for judicial acts performed by a judge of a court of general jurisdiction as consistently defined by the Supreme Court. The issue is important since the principle of judicial immunity exists not for the protection or benefit of judges, but for the benefit of the public whose interest it is that judges should be at liberty to exercise their functions with independence and without fear of consequences.

REASONS FOR GRANTING THE WRIT

1. THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH THE COMMON LAW PRINCIPLE OF ABSOLUTE JUDICIAL IMMUNITY AS CONSISTENTLY DEFINED BY THE SUPREME COURT. IT PRESENTS AN IMPORTANT ISSUE, SINCE THE PRINCIPLE OF JUDICIAL IMMUNITY EXISTS NOT FOR THE BENEFIT OF JUDGES, BUT FOR THE BENEFIT OF THE PUBLIC WHOSE INTEREST IT IS THAT JUDGES SHOULD BE AT LIBERTY TO EXERCISE THEIR FUNCTIONS WITH INDEPENDENCE AND WITHOUT FEAR OF CONSEQUENCES. UNLESS REVERSED, JUDGES OF ALL COURTS WILL ACT AT THE RISK OF CIVIL LIABILITY EVERY TIME THEY ISSUE A BODY ATTACHMENT, ARREST WARRANT OR OTHER CUSTODIAL DIRECTION FROM THE BENCH IN A CASE PENDING BEFORE THEM.

In this case, a judge of a court of general jurisdiction is alleged to have ordered police officers to bring an attorney of record in a case pending on the court's calendar before that court from another location in the courthouse. It is alleged that he ordered the police

officers to do so with unreasonable force.

The attorney in question was counsel of record for a party to a proceeding on the court's calendar who had chosen to appear elsewhere because the attorney had determined that his case would not go forward that morning. (Complaint, Appendices to Petition, p. B-3, para. 7(a). The attorney alleges that the defendant judge was angered by the attorney's absence from the courtroom and ordered him brought "forcibly and with excessive force" to the courtroom for the morning calendar.

There is no question that the judge had the jurisdiction to require the attorney to be present in his courtroom and to order the attorney to be brought involuntarily to the court for the scheduled appearance. (California Code

of Civil Procedure §128, set out at p. 3 of the Petition). There is no question that the judge would be entitled to judicial immunity if it was alleged that he merely directed the officers to bring the attorney to his courtroom without directing them to use excessive force. (See opinion of the Court of Appeals, Appendices to Petition, p. A-5).

The Court of Appeals concluded, however, that the attorney could plead past judicial immunity and require the judge to answer the complaint and proceed to trial by alleging that the judge exercised his judicial power unreasonably by directing the officers to use excessive force in carrying out his lawful order to bring the attorney to his courtroom.

This qualification of the principle of judicial immunity threatens the

independence of judges because allegations of the unreasonableness of judicial acts can always be made. If the reasonableness of a clearly judicial act must be litigated before the immunity may be applied, judges in exercising the authority vested in them will not be free to act without apprehension of personal consequences.

This decision of the Court of Appeals is in direct conflict with the common law rule of judicial immunity as set forth in this Court's opinions in *Stump v. Sparkman* (1978) 435 U.S. 349, and *Bradley v. Fisher* (1872) 80 U.S. 335.

In *Stump v. Sparkman* this Court explained that the necessary inquiry in determining whether a judge of a court of general jurisdiction is immune from suit is whether at the time he took the

challenged action he had jurisdiction over the subject matter before him. Saying that the scope of the judge's jurisdiction must be construed broadly where the issue is immunity from suit, this Court explained that the judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority, but will be subject to liability only when he has acted in the clear absence of all jurisdiction.

In *Bradley v. Fisher* this Court said that the exemption of judges from civil liability cannot be affected by the motives with which their judicial acts are performed, noting that allegations of malicious or corrupt motives could always be made, and if motives could be inquired into, judges would be subjected to

vexatious litigation, whether the motives had or had not any real existence.

The Petition presents an important issue, since the principle of judicial immunity exists not for the benefit of judges, but for the benefit of the public whose interest it is that judges should be at liberty to exercise their functions with independence and without fear of consequences. See *Pierson v. Ray* (1967) 386 U.S. 547.

If a case seeking damages for judicial acts that are alleged to have caused damage cannot be quickly dismissed on the basis of an unequivocal principle of judicial immunity, the purpose of the rule will be defeated. The judge whose actions are being challenged and other judges aware of the litigation will be apprehensive that they are not protected by absolute judicial immunity, and in

varying degrees their decisions and judicial actions will be affected.

The consequences of permitting a litigant to plead past a motion to dismiss are significant even if the allegations are determined to be ultimately unfounded. The judge must arrange for counsel, although he may seek recovery of the cost thereof.³ He may, as was the case here, be subjected to considerable criticism in the press or by the public when the case is not promptly dismissed. He may be required to respond to discovery concerning his judicial

³ In California, the judge may be entitled to representation by the County Counsel upon request to the extent that such representation is not in conflict with and does not interfere with the County Counsel's other duties. California Government Code §27647. A judge who must retain his own counsel may recover the reasonable costs incurred from the County. California Government Code §27648.

actions and thought process. The lengthy pendency of the action may adversely affect his credit rating. Quite simply, the judge will be presented for a considerable period of time with events that may inhibit that judge and others in exercising the judicial authority vested in them free from apprehension of personal consequence. The purpose of the principle of judicial immunity and the public benefit it was established to further will not be served.

CONCLUSION

This Court should issue a writ of certiorari to the Ninth Circuit Court of Appeals to review its judgment and opinion in this action.

DATE: September 16, 1991

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